

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 218 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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COMMISSIONER OF INCOME-TAX

Versus

MEHMOODIYAN A TOPIWALA

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner
MR RD PATHAK for Respondent

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 09/02/99

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

At the instance of the revenue, the following questions have been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' to this Court for its opinion, under section 256(1) of the Income Tax Act, 1961 (IT Act for short):

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that as the assessee had made gifts to his major nephew, the gifts made by the assessee's brother to his wife would not come within the mischief of Sec.64 of the I.T.Act, 1961 ?

2. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in confirming the order of the AAC deleting the addition of Rs.8663 for A.Y.1977-78 and Rs.10,221 for A.Y.78-79 as the income of the assessee u/s.64 of the I.T.Act, 1961 ?"

The respondent assessee submitted return of A.Y.1977-78 on 3.8.77 showing his income at Rs.48,900/- and the same was assessed and accepted by the I.T.O. Similarly for the A.Y.1978-79, the assessment order came to be passed accepting the return.

The Appellate Assistant Commissioner of Income-tax, following the earlier decision of the Tribunal, in the case of the same assessee for the A.Y.1974-75 held that the gifts were not crossed gifts and the cases for such assessee had been covered by section 64 of the I.T.Act. The Appellate Tribunal, upon an appeal, at the instance of the revenue confirmed the view taken by the A.A.C. Therefore, at the instance of the revenue, aforesaid two questions have been referred for our opinion.

Learned counsel for the appellant-revenue, drew our attention to a case in Commissioner of Income-tax v. Mahmoodmiya A. Topiwala (same assessee), 207 ITR 711. After having considered the facts of the present case and the ratio laid down by this Court in the aforesaid case, the present reference is squarely governed by the said ratio. We do not find any reason or material to take a different view, and therefore, we are, broadly, in agreement with the earlier view of this Court.

Therefore, questions Nos.1 & 2 referred to us will have to be answered in negative, i.e. in favour of the revenue and against the assessee and accordingly we answer the questions. The reference shall stand disposed of accordingly without costs.

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(vjn)